

**COMMONWEALTH OF MASSACHUSETTS**

**DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

_____	)	
Complaint of WorldCom Technologies, Inc.	)	
Against New England Telephone and Telegraph	)	D.T.E. 97-116
Company, d/b/a Bell Atlantic-Massachusetts	)	
_____	)	

_____	)	
Complaint of Global NAPs, Inc.	)	
Against New England Telephone and Telegraph	)	D.T.E. 99-39
Company, d/b/a Bell Atlantic-Massachusetts	)	
_____	)	

**INITIAL BRIEF OF VERIZON MASSACHUSETTS ON REMAND**

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In accordance with the Hearing Officer’s Memorandum of October 24, 2002, Verizon New England Inc. d/b/a Verizon Massachusetts (“Verizon MA”) respectfully submits this initial brief on remand.

**I. INTRODUCTION AND SUMMARY**

The District Court remanded to the Department “for proceedings or deliberations not inconsistent with the rulings herein and with those parts of the [Magistrate Judge’s] Findings and Recommendations that explicate the reasons for granting summary judgment to the plaintiffs and denying summary judgment to the defendants.” Memorandum Order on Magistrate Judge’s Report and Recommendation on Defendants’ Motions for Summary Judgment at 3, *Global NAPs, Inc. v. New England Tel. & Tel. Co. d/b/a Verizon-Massachusetts*, Nos. 00-10407-RCL & 00-11513-RCL (D. Mass. Aug. 27, 2002) (“District Court Order”). In those Findings and Recommendations, the Magistrate Judge stated that, when the Department resolved the

reciprocal compensation dispute in these proceedings, it “only looked to federal law as the source of reciprocal compensation” and “not . . . to whether the interconnection agreements give rise to reciprocal compensation as a matter of Massachusetts contract law.” Findings and Recommendations at 26 (July 5, 2002). The Magistrate Judge thus recommended a remand to permit the Department to resolve the dispute on the basis of the language of the agreements in light of “Massachusetts law and other equitable and legal principles.” *Id.* at 26, 27. The Magistrate Judge made clear, however, in a portion of the Findings and Recommendations that the District Court “expressly adopt[ed],” that, on remand, “the [Department] is not required to reach the same result it reached” in the initial order in D.T.E. 97-116, where it found that Verizon MA was required to pay reciprocal compensation for Internet-bound traffic. *Id.* at 26. Indeed, “the Court [took] no position” on whether, as the Department had appeared to conclude in its later orders, the relevant terms of the interconnection agreements provide for reciprocal compensation only to the extent required by the federal Telecommunications Act of 1996 (“1996 Act” or “Act”). *Id.* at 26 n.19. Instead, the Magistrate Judge held merely that, whatever conclusion it may reach on remand, “the [Department] must set forth a clear analysis of the issue based upon all relevant language in the interconnection agreements.” *Id.*

That holding frames the Department’s responsibility on remand. The dispositive issue here can thus be simply stated:

Do the agreements, when interpreted in accordance with principles of Massachusetts contract law, require the payment of reciprocal compensation for Internet-bound traffic?

The answer to that question is “No.” Applying Massachusetts contract law, Verizon MA’s agreements with WorldCom, Inc. (“WorldCom”) and Global NAPs, Inc. (“GNAPs”)<sup>1</sup> by

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<sup>1</sup> Verizon MA and WorldCom are successors to the original parties to the agreements.

their plain terms make clear that they require reciprocal compensation *only* to the extent mandated by federal law — more specifically, section 251(b)(5) of the 1996 Act. The relevant portions of the agreements are entitled “Reciprocal Compensation Arrangements — Section 251(b)(5).” The agreements further specify that “Reciprocal Compensation is As Described in the Act,” which means as “described in or required by the Act and as from time to time interpreted in the duly authorized rules and regulations of the FCC or the Department.” And the definition of the “Local Traffic” for which reciprocal compensation is required mirrors the language that the Federal Communications Commission (“FCC” or “Commission”) used in its 1996 *Local Competition NPRM*<sup>2</sup> and the subsequent *Local Competition Order*.<sup>3</sup>

As a matter of Massachusetts contract law, the Department must give effect to the plain language in the agreements. These agreements unambiguously tie the parties’ reciprocal compensation duties to federal law, and because the FCC has repeatedly concluded that federal law does *not* mandate reciprocal compensation for Internet-bound traffic, as a matter of Massachusetts contract law, the only proper conclusion is that reciprocal compensation is not required for this traffic. Indeed, the FCC itself has already reached precisely that conclusion in addressing a nearly identical contract-interpretation dispute in a decision that provides an authoritative template for the Department’s resolution of those issues.<sup>4</sup>

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<sup>2</sup> Notice of Proposed Rulemaking, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 14171 (1996).

<sup>3</sup> First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, *modified on recon.*, 11 FCC Rcd 13042 (1996), *vacated in part*, *Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *aff’d in part, rev’d in part sub nom. AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999), *decision on remand*, *Iowa Utils. Bd. v. FCC*, 219 F.3d 744 (8th Cir. 2000), *aff’d in part, rev’d in part sub nom. Verizon Communications Inc. v. FCC*, 122 S. Ct. 1646 (2002).

<sup>4</sup> *Starpower Communications, LLC v. Verizon South Inc.*, 17 FCC Rcd 6873 (2002), *petitions for review pending*, *Starpower Communications, LLC v. FCC*, Nos. 02-1131 & 02-1177 (D.C. Cir.) In its *Starpower* order, the FCC, standing in the shoes of the Virginia State Corporation Commission, considered whether certain interconnection agreements “entitle Starpower to receive reciprocal compensation for the delivery of ISP-bound traffic.” *Id.* ¶ 23. Relying on the plain terms of the agreements — as the Department must

In the remainder of this brief, Verizon MA outlines the principal events leading up to the District Court’s remand decision, and then explains in greater depth the reasons why the language of the agreements at issue do not provide for reciprocal compensation on Internet-bound traffic.

## **II. BACKGROUND**

### **A. The Agreements at Issue**

Verizon MA and WorldCom negotiated and entered into an interconnection agreement under the 1996 Act, which the Department approved in 1996. The agreement’s provisions link the parties’ obligations — and, particularly, their reciprocal compensation obligations — to the requirements of the 1996 Act. The initial Whereas Clauses of the agreement declare that the parties “are entering into this Agreement to set forth the respective obligations of the Parties and *the terms and conditions under which the Parties will interconnect their networks* and provide other services *as required by the Act . . .* and additional services as set forth herein.” Verizon MA-WorldCom Agreement, Whereas Recital, at 1 (emphasis added). The agreement further states — in a provision expressly intended to define its scope — that “the terms of this Agreement, if fully and completely met by [Verizon MA], will satisfy *the obligation of [Verizon MA] to provide Interconnection under Section 251 of the Act.*” *Id.* § 3.0 (emphasis added).

The title of the relevant portion of the agreement (section 5.8) is “Reciprocal Compensation Arrangements — Section 251(b)(5).” “Reciprocal Compensation” itself is expressly defined to be “As Described in the Act,” which in turn is explicitly defined to mean “as described in or *required by the Act and as from time to time interpreted in the duly authorized rules and regulations of the FCC or the Department.*” *Id.* §§ 1.6, 1.53 (emphasis added).

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do in applying Massachusetts contract law — the FCC ruled that those agreements must be understood to “exclude such traffic from the scope of their reciprocal compensation provisions.” *Id.* ¶¶ 31, 41.

The definition of the “Local Traffic” for which reciprocal compensation is required mirrors the FCC’s then-current understanding of the limits of LECs’ reciprocal compensation obligations. In its initial rulemaking to implement the 1996 Act, the FCC stated that section 251(b)(5) “appears at least to encompass telecommunications traffic that *originates* on the network of one LEC and *terminates* on the network of a competing LEC *in the same local service area*.”<sup>5</sup> The FCC formally adopted this same conclusion in its August 1996 *Local Competition Order*, in which the FCC concluded that “section 251(b)(5) reciprocal compensation obligations *should apply only to traffic that originates and terminates within a local area*”; those obligations “do not apply to the transport or termination of interstate or intrastate interexchange traffic.”<sup>6</sup> That ruling was codified in regulations providing that LECs “shall establish reciprocal compensation arrangements for transport and termination of local telecommunications traffic,” 47 C.F.R. § 51.703(a) (1997), with “local telecommunications traffic” defined as traffic that “originates and terminates within a local service area established by the state commission,” *id.* § 51.701(b)(1).

Tracking these FCC statements, the interconnection agreement provides that “Reciprocal Compensation only applies to the transport and termination of Local Traffic,” defined as “a call which is *originated* and *terminated* within a given LATA, in the Commonwealth of Massachusetts, as defined in DPU Tariff 10, Section 5.” Verizon MA-WorldCom Agreement §§ 1.38, 5.8.1 (emphasis added). Additionally, this agreement expressly excludes “Switched Exchange Access Service,” a class defined to include “Feature Group A” traffic (which, as

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<sup>5</sup> *Local Competition NPRM* ¶ 230 (emphasis added).

<sup>6</sup> *Local Competition Order* ¶ 1034 (emphasis added).

explained below, the FCC has found to be very similar to dial-up Internet access), from all reciprocal compensation requirements. *Id.* §§ 1.60, 5.8.3.

Verizon MA entered into an interconnection agreement with GNAPs in April 1997. That agreement is substantially the same in all material respects as the Verizon MA-WorldCom Agreement. *See* Verizon MA-GNAPs Agreement §§ 1.6, 1.38, 1.54, 5.7.1. Additionally, before the agreement was executed, Verizon MA specifically informed GNAPs that, under the terms of the agreement, Internet-bound traffic would not be subject to reciprocal compensation. *See* Letter from Bruce P. Beausejour to William J. Rooney, Jr. (Apr. 15, 1997).

## **B. The Initial Department Proceeding**

After these agreements were executed, disputes arose concerning whether, under the agreements, Verizon MA must pay reciprocal compensation for calls originated by Verizon MA customers, handed off to WorldCom or GNAPs, and from there routed to an Internet service provider (“ISP”) for termination to Internet destinations throughout the world.<sup>7</sup> Verizon MA refused to pay reciprocal compensation for such Internet-bound calls on the ground that they are outside the scope of the agreements’ reciprocal compensation provisions.

When the parties to the Verizon MA-WorldCom Agreement could not resolve their dispute, WorldCom filed a complaint with the Department seeking an order directing Verizon MA to pay reciprocal compensation for that traffic. The Department determined that, to grant the requested relief, it need resolve only a single issue in WorldCom’s favor: “whether a call terminated by [WorldCom] to an ISP is local, thus qualifying it for reciprocal compensation under [WorldCom’s] interconnection agreement with [Verizon MA].” D.T.E. 97-116, at 6 (Oct. 21, 1998) (“October 1998 Order”). In answering that question in the affirmative, the Department

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<sup>7</sup> “ISP-bound traffic” and “Internet-bound traffic” have precisely the same meaning. Both refer to calls routed through an ISP to Internet destinations, which can be located anywhere in the world.

relied on its understanding that, under federal law, the FCC would apply the so-called “two-call” theory to determine whether Internet-bound traffic was “local.” *Id.* at 11-12. Based on this reading of FCC precedent, the Department concluded that an Internet-bound call is not a single communication that terminates only at Internet destinations specified by the calling party, as Verizon MA had argued, but rather “is functionally two separate services: (1) a local call [that terminates at] the ISP, and (2) an information service provided by the ISP when the ISP connects the caller to the Internet.” *Id.* at 11. The Department accordingly found that an Internet-bound call qualified as a local call “for purposes of the definition of local traffic in the Agreement,” and that Verizon MA must pay reciprocal compensation to WorldCom for such calls. *Id.* at 13-14. In addition, because Verizon MA’s interconnection agreements with other carriers contained a similar definition of local traffic, the Department stated that “we expect that [Verizon MA] will apply this finding to other CLEC interconnection agreements.” *Id.* at 14.

The Department noted that the issue of the nature of such calls was under review by the FCC, and stated that “the FCC may make a determination in proceedings pending before it that could require us to modify our findings in this Order.” *Id.* at 5 n.11; *see also id.* at 6 n.12.

### **C. The FCC’s ISP Declaratory Ruling**

In February 1999, the FCC reached a conclusion directly contrary to the Department’s decision that Internet-bound traffic was “local.” The FCC expressly disapproved the “two-call” theory, explaining that it had long “rejected attempts to divide communications at any intermediate points of switching or exchanges between carriers.” *ISP Declaratory Ruling*<sup>8</sup> ¶ 10. That principle led the FCC to conclude that Internet-bound calls “do not terminate at the ISP’s

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<sup>8</sup> Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Inter-Carrier Compensation for ISP-Bound Traffic*, 14 FCC Rcd 3689 (1999), *vacated and remanded*, *Bell Atlantic Tel. Cos. v. FCC*, 206 F.3d 1 (D.C. Cir. 2000).

local server, as CLECs and ISPs contend, but continue to the ultimate destination or destinations, specifically at a[n] Internet website that is often located in another state.” *Id.* ¶ 12 (footnote omitted). Because Internet-bound calls do not terminate locally, the FCC determined that neither the 1996 Act nor the FCC’s implementing rules require reciprocal compensation for such traffic:

[S]ection 251(b)(5) of the Act and our rules promulgated pursuant to that provision concern inter-carrier compensation for interconnected *local* telecommunications traffic. We conclude in this Declaratory Ruling, however, that ISP-bound traffic is non-local interstate traffic. Thus, the reciprocal compensation requirements of section 251(b)(5) of the Act and . . . the Commission’s rules do not govern inter-carrier compensation for this traffic.

*Id.* ¶ 26 n.87; *see also id.* ¶ 22 (“sections 251 and 252 of the Act . . . do not apply as a matter of law”).

In the same order, the FCC recognized that “parties may voluntarily include [Internet-bound] traffic within the scope of their interconnection agreements,” and can agree “to treat [that] traffic as subject to reciprocal compensation.” *Id.* ¶¶ 22, 23. Thus, under the FCC’s order, when parties agree to go beyond the requirements of section 251(b)(5) by treating Internet-bound traffic “*as though* it were local,” even though it is not, state commissions may properly enforce that agreement. *Id.* (emphasis added). The FCC enumerated certain illustrative, intent-based factors that a state commission might, but need not, consider in determining whether a party voluntarily agreed to accept obligations that go beyond the federal requirements. *See id.* ¶¶ 24-25. At the same time, the FCC recognized that, where state commissions had rested their determinations on the “two-call” theory, they may have to revisit those decisions. *See id.* ¶ 27.

#### **D. The Department’s Reconsideration**

After the FCC released its *ISP Declaratory Ruling*, Verizon MA asked the Department to reconsider its October 1998 Order in light of the FCC’s clear rejection of the “two-call” theory.

The Department agreed that the FCC’s ruling “rendered the [Department’s] October 1998 Order in *MCI WorldCom* — as a practical matter — a nullity.” D.T.E. 97-116-C, at 24 (May 19, 1999) (“May 1999 Order”). As the Department explained, it had rested its October 1998 Order “on the express *and exclusive* premise that ‘[a] call to an ISP is functionally two separate services.’” *Id.* at 23; *see also id.* at 22 (“[N]o other basis may be reasonably inferred from the Order.”). The Department continued:

To repeat, lest it be misunderstood: there was no other basis for the Department’s holding in *MCI WorldCom*. If that express legal basis were to prove untenable (as, in the event, it has), the effectiveness of the Order could not hold. And the Department recognized and acknowledged as much.

*Id.* at 22 (citation omitted).

The Department accordingly vacated its October 1998 Order.<sup>9</sup> The Department, however, also acknowledged that WorldCom could “renew its complaint” and point to some basis *other* than the “two-call” theory for finding that the agreement requires reciprocal compensation for Internet-bound traffic. *See id.* at 27. Neither WorldCom nor GNAPs nor any other affected party has ever accepted the Department’s invitation to present the issue afresh on a basis other than the discredited “two-call” theory.

The Department went on to explain that, as a policy matter, the reciprocal compensation regime approved in its October 1998 Order “does not promote real competition,” and “is really just an unintended arbitrage opportunity” that “enriches competitive local exchange carriers, Internet service providers, and Internet users at the expense of telephone customers or shareholders.” *Id.* at 32. Although it recognized that profit-maximizing companies should not be chastised for exploiting such loopholes, the Department concluded that “regulatory policy . . .

ought not create such loopholes or, once having recognized their effects, ought not leave them open.” *Id.* at 33.

After the Department denied motions for reconsideration, WorldCom sought review of the May 1999 Order in the District Court. GNAPs, whose separate complaint the Department dismissed as moot, likewise sought review.

#### **E. The D.C. Circuit Decision and the Subsequent Department Proceeding**

In March 2000, the D.C. Circuit vacated and remanded the *ISP Declaratory Ruling*. The court did so, however, *not* because the FCC’s decision was substantively incorrect, but rather for lack of sufficient explanation. *See Bell Atlantic Tel. Cos. v. FCC*, 206 F.3d 1, 9 (D.C. Cir. 2000) (“the Commission has not provided a satisfactory explanation why LECs that terminate calls to ISPs are not properly seen as ‘terminat[ing] . . . local telecommunications traffic,’ and why such traffic is ‘exchange access’ rather than ‘telephone exchange service’”). The court made clear that, with proper explanation, the FCC could again determine that neither the 1996 Act nor its regulations impose reciprocal compensation obligations for Internet-bound traffic. *See id.*

Following the D.C. Circuit’s decision, GNAPs filed a motion urging the Department to vacate its May 1999 Order. After further administrative proceedings, the Department decided to leave its May 1999 Order in place. *See* D.T.E. 97-116-E, Order Denying Global NAPs, Inc.’s Motion to Vacate at 15, (July 11, 2000) (“July 2000 Order”). It found, first, that the D.C. Circuit’s decision did not require it to reinstate the October 1998 Order (*id.* at 14-15), and, second, that it would be contrary to sound public policy to reinstate the order at that time. *Id.* at 15.

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<sup>9</sup> The Department also relieved Verizon MA of the previously imposed obligation to apply the conclusions of the October 1998 Order to its interconnection agreements with other CLECs. *See May 1999 Order* at 27-28.

## **F. The FCC's Remand Order and the Department's Response**

On remand from the D.C. Circuit, the FCC reiterated, albeit on a different statutory theory, that an Internet-bound call is a single communication that travels “beyond the local exchange,” and that such traffic is not subject to reciprocal compensation under section 251(b)(5). *ISP Remand Order*<sup>10</sup> ¶¶1, 37. The FCC also reaffirmed that Internet-bound traffic is jurisdictionally interstate. *See id.* ¶¶52-65. When a subscriber seeks access to the Internet by dialing an ISP's local phone number, the call “is not simply a local call from a consumer to a machine,” nor is it “‘really like a call to a local business’ — such as a pizza delivery firm.” *Id.* ¶¶63, 64 (quoting *Bell Atlantic*, 206 F.3d at 8). Instead, such calls “permit the dial-up Internet user to communicate directly with some distant site or party (other than the ISP) that the caller has specified.” *Id.* ¶59. Internet-bound traffic, therefore, “is analogous, though not identical, to long distance calling service,” and “is indisputably interstate in nature.” *Id.* ¶¶58, 60-61.

Echoing this Department's findings in its May 1999 Order, moreover, the FCC explained that state-created mechanisms requiring the payment of reciprocal compensation for Internet-bound calls had “created opportunities for regulatory arbitrage,” had “created incentives for inefficient entry of LECs intent on serving ISPs exclusively and not offering viable local telephone competition,” and had thereby encouraged CLECs “to compete, not on [the] basis of quality and efficiency, but on the basis of their ability to shift costs to other carriers, a troubling distortion that prevents market forces from distributing limited investment resources to their most efficient uses.” *Id.* ¶¶2, 4, 21. The FCC accordingly proposed an interim federal regime for intercarrier compensation designed “to eliminate arbitrage opportunities presented by the

existing recovery mechanism” for Internet-bound traffic, and to begin a “transition towards a complete bill and keep recovery mechanism.” *Id.* ¶ 7.<sup>11</sup>

In August 2001 the Department issued an order in the wake of the FCC’s *ISP Remand Order*. D.T.E. 97-116-F (Aug. 29, 2001). The Department found that nothing in the FCC’s order contradicted the Department’s earlier conclusion that “ISP-bound traffic is not subject to reciprocal compensation pursuant to the parties’ interconnection agreements,” or its determination that it had erred, in October 1998, in relying on a “two-call” theory. *Id.* at 13; *see also id.* at 11. The Department accordingly reaffirmed its May 1999, February 2000, and July 2000 orders.

#### **G. The Massachusetts District Court Remand Decision**

As described at the outset of this brief, the Magistrate Judge believed (mistakenly, in Verizon MA’s view) that the Department had failed, in its prior orders, to consider the language of the interconnection agreements at issue. In accordance with her recommendation, the District Court remanded for the limited purpose of allowing the Department to examine the terms of those agreements and to decide, in light of Massachusetts contract law and related equitable principles, whether the parties had agreed to pay reciprocal compensation for Internet-bound traffic. *See* District Court Order at 3; Findings and Recommendations at 26-27. The Magistrate Judge emphasized that the Department remains free on remand to adhere to the same conclusions it reached in its prior orders, so long as it rests its decision on the language of the agreements.

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<sup>10</sup> Order on Remand and Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, 16 FCC Rcd 9151 (2001), *remanded*, *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002).

<sup>11</sup> On appeal, the D.C. Circuit remanded to the FCC for further proceedings. *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002). But because “there is plainly a non-trivial likelihood that the Commission has authority to elect such a [bill-and-keep recovery] system,” the court specifically declined to vacate the *ISP Remand Order* pending further proceedings on remand. *Id.* at 434. As a result, the FCC’s interim regime remains in full effect pending a further agency order.

Findings and Recommendations at 26. She also made clear that, if the Department determines that the terms of the agreements tie reciprocal compensation to the requirements of federal law, it may look to the governing principles of federal law in deciding the issue before it. *Id.* at 26 n.19.

### **III. ARGUMENT: VERIZON MA HAS NO OBLIGATION UNDER THE TERMS OF THE INTERCONNECTION AGREEMENTS TO PAY RECIPROCAL COMPENSATION FOR INTERNET-BOUND TRAFFIC**

#### **A. Massachusetts Contract Law Requires That the Department Adhere to the Plain Meaning of These Agreements**

This case is governed by the plain meaning of the interconnection agreements' terms. Under Massachusetts law, which supplies the applicable rules of contract interpretation in this case, "where [a] contract is unambiguous, it is to be enforced according to its terms." *Coll v. PB Diagnostic Sys.*, 50 F.3d 1115, 1122 (1st Cir. 1995) (applying Massachusetts law) (internal quotation marks omitted); *Freeland v. G. & K. Realty Corp.*, 258 N.E.2d 786, 788 (Mass. 1970). "[P]arties are bound by the plain terms of the contract," *Hiller v. Submarine Signal Co.*, 91 N.E.2d 667, 669 (Mass. 1950), and their subjective expectations are immaterial where those terms are unambiguous, *Blakeley v. Pilgrim Packing Co.*, 340 N.E.2d 511, 514 (Mass. App. Ct. 1976). "[W]ords that are plain and free from ambiguity must be construed in their usual and ordinary sense." *Ober v. Nat'l Cas. Co.*, 60 N.E.2d 90, 91 (Mass. 1945); *accord McDonald's Corp. v. Lebow Realty Trust*, 888 F.2d 912, 913 (1st Cir. 1989) (applying Massachusetts law). Moreover, in construing a written agreement, "[t]he court is to construe the contracts as whole, in a reasonable and practical way, consistent with its language, background, and purpose. *USM Corp. v. Arthur D. Little Sys.*, 546 N.E.2d 888, 893 (Mass. App. Ct. 1989).

Under those standards, the interconnection agreements at issue here unambiguously exclude Internet-bound traffic from the requirement to pay reciprocal compensation.

**B. Under the Terms of the Interconnection Agreements, the Parties' Reciprocal Compensation Obligations Are Coextensive with the Requirements of Federal Law**

The plain language of both the Verizon MA-WorldCom Agreement and the Verizon MA-GNAPs Agreement demonstrates that the parties adopted federal-law requirements as to reciprocal compensation. Put differently, the plain terms of the agreements show that the parties agreed to pay reciprocal compensation to the extent required by federal law, no more and no less. This is evident from both the key language setting forth the overriding intent of the agreements, and the specific text addressing the subject of reciprocal compensation. The textual evidence on this point is both ample and consistent, and, under Massachusetts contract law, that unambiguous language must be given effect.

The parties' agreement to follow federal law is clear from the very outset of the agreements, where they agreed that they were "entering into this Agreement to set forth the respective obligations of the Parties and *the terms and conditions under which the parties will interconnect their networks* and provide other services *as required by the Act . . . and additional services as set forth herein.*" Verizon MA-WorldCom Agreement, Whereas Recital, at 1; Verizon MA-GNAPs Agreement, Whereas Recital, at 1. The Verizon MA-WorldCom Agreement further states that "the terms of this Agreement, if fully and completely met by [Verizon MA], will satisfy *the obligation of [Verizon MA] to provide Interconnection under Section 251 of the Act.*" Verizon MA-WorldCom Agreement § 3.0 (emphasis added). The Verizon MA-GNAPs Agreement is to the same effect. It states that the "Agreement sets forth the terms and conditions under which GNAPs and [Verizon MA] will *interconnect their respective networks* to enable GNAPs to provide telecommunications services *consistent with the rights and obligations set forth in Section 251 of the Act.*" Verizon MA-GNAPs Agreement § 3.0 (emphasis added).

The parties' agreement to follow federal law is made especially clear in the provisions dealing with reciprocal compensation. The title of the relevant portion of the agreements (Verizon MA-WorldCom Agreement § 5.8; Verizon MA-GNAPs Agreement § 5.7) is "Reciprocal Compensation Arrangements — Section 251(b)(5)." "Reciprocal Compensation" itself is then expressly defined to be "As Described in the Act," which in turn is explicitly defined to mean "as described in or *required by the Act and as from time to time interpreted in the duly authorized rules and regulations of the FCC or the Department.*" Verizon MA-WorldCom Agreement §§ 1.6, 1.53 (emphasis added); Verizon MA-GNAPs Agreement §§ 1.6, 1.54. The parties could not have made plainer that "reciprocal compensation" was to be understood in accordance with the requirements established by the FCC and, where appropriate, the Department.

The parties' adoption of federal law obligations is also clear from the fact that the key provisions outlining the duty to pay reciprocal compensation for "Local Traffic" track the then-applicable FCC understanding of those requirements. The relevant provisions in the Verizon MA-WorldCom Agreement state:

Reciprocal Compensation only applies to the transport and termination of Local Traffic billable by [Verizon MA] or [WorldCom] which a Telephone Exchange Service Customer originates on [Verizon MA's] or [WorldCom's] network for termination on the other Party's network except as provided in Section 5.8.6 [pertaining to interim number portability] below.

Verizon MA-WorldCom Agreement § 5.8.1.

"Local Traffic" means a call which is *originated* and *terminated* within a given LATA, in the Commonwealth of Massachusetts, as defined in DPU Tariff 10, Section 5, except for those calls that are specified to be terminated through switched access arrangements. IntraLATA calls originated on a 1+ presubscription basis when available or a casual dialed (10XXX/101XXXX) basis are not considered local traffic.

*Id.* § 1.38 (emphasis added).<sup>12</sup>

The FCC’s April 1996 *Local Competition NPRM* similarly made plain that reciprocal compensation applied only to calls that “originated” and “terminated” in a particular local calling area. It stated that the duty imposed by section 251(b)(5) “appears at least to encompass telecommunications traffic that *originates* on the network of one LEC and *terminates* on the network of a competing LEC in the same local service area.”<sup>13</sup> The August 1996 *Local Competition Order* is to the same effect. There, the FCC concluded that “section 251(b)(5) reciprocal compensation obligations should apply only to traffic that originates and terminates within a local area.”<sup>14</sup> The rules that the FCC promulgated with that order similarly stated that LECs “shall establish reciprocal compensation arrangements for transport and termination of local telecommunications traffic,” 47 C.F.R. § 51.703(a) (1997), with “local telecommunications traffic” defined as traffic that “originates and terminates within a local service area established by the state commission,” *id.* § 51.701(b)(1).<sup>15</sup>

There is also an additional way that the agreements track federal law in limiting reciprocal compensation duties. The Verizon MA-WorldCom Agreement specifically provides that “[t]he Reciprocal Compensation arrangements set forth in this Agreement *are not applicable* to Switched Exchange Access Service” and that existing tariffs would continue to

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<sup>12</sup> The relevant terms of the Verizon MA-GNAPs Agreement (sections 1.38, 5.7.1) are substantively identical for these purposes.

<sup>13</sup> *Local Competition NPRM* ¶ 230 (emphasis added).

<sup>14</sup> *Local Competition Order* ¶ 1034.

<sup>15</sup> Indeed, when the Department first considered the Verizon MA-WorldCom Agreement in the October 1998 Order, it looked to federal law to determine the scope of the parties’ obligations by focusing on whether Internet-bound traffic was “local” under FCC precedent. At that time, however, the Department misinterpreted federal law, believing that the FCC would apply the so-called “two-call” theory for such traffic, and find that the traffic was “local.” October 1998 Order at 11-12. As the FCC later established in the *ISP Declaratory Ruling*, it has never used the “two-call” theory to determine whether traffic was local or interexchange. *See ISP Declaratory Ruling* ¶ 10. The Department’s May 1999 Order corrected the interpretive error made in the prior ruling.

apply to those services. Verizon MA-WorldCom Agreement § 5.8.3 (emphasis added). The Verizon MA-GNAPs Agreement contains a substantively identical provision. Verizon MA-GNAPs Agreement § 5.7.3. This too tracks the FCC’s understanding of the scope of section 251(b)(5). *See Local Competition Order* ¶ 1034.

This express exclusion in the agreements is particularly important because the Agreements specifically define “Switched Exchange Access Service” to include Feature Group A traffic, *see* Verizon MA-WorldCom Agreement § 1.60; Verizon MA-GNAPs Agreement § 1.60. The FCC has specifically determined that the technical routing required for Feature Group A is “quite similar” to the dial-up Internet-bound traffic. *See ISP Remand Order* ¶ 61. As the FCC explained:

[T]he technical configurations for establishing dial-up Internet connections are quite similar to certain network configurations employed to initiate more traditional long-distance calls. . . . In particular, under “Feature Group A” access, the caller first dials a seven-digit number to reach the IXC, and then dials a password and the called party’s area code and number to complete the call. Notwithstanding this dialing sequence, the service the LEC provides is considered *interstate* access service, not a separate local call. Internet calls operate in a similar manner: after reaching the ISP’s server by dialing a seven-digit number, the caller selects a website (which is identified by a 12-digit Internet address, but which often is, in effect, “speed dialed” by clicking an icon) and the ISP connects the caller to the selected website.

*Id.* (footnote omitted).

It should not be a surprise that the parties to these agreements, although free to depart from federal-law requirements, *see* 47 U.S.C. § 252(a), tied their reciprocal compensation obligations so closely to the mandates of federal law. If the parties to a negotiation are unable to agree on the terms and conditions of an interconnection agreement, the state commission will resolve the dispute in accordance with “the requirements of section 251 . . . , including the

regulations prescribed by the Commission pursuant to section 251.” *Id.* § 252(c)(1). Accordingly, “many so-called ‘negotiated’ provisions represent nothing more than an attempt to comply with the requirements of the 1996 Act.” *AT&T Communications of Southern States, Inc. v. BellSouth Telecomms., Inc.*, 229 F.3d 457, 465 (4th Cir. 2000). As the Fourth Circuit explained:

[I]f a particular provision [of an interconnection agreement] is mandated by the 1996 Act, the FCC rules or regulations, or some application thereof, then a party might agree to that provision without resort to arbitration. Such an agreement, which would occur without arbitration, is not necessarily “without regard” to the 1996 Act and law thereunder. In other words, some provisions may be negotiated and agreed upon “with regard” to the 1996 Act and law thereunder, and provisions so negotiated and agreed upon may be reformed if the controlling law changes. Indeed, were it otherwise, parties would have an incentive to submit each issue to arbitration, so that if there were a change in controlling law, the provision would be so reformed. We decline to so encourage arbitration at the expense of negotiation.

*Id.* The Fourth Circuit also explained that, “[w]here a provision plainly tracks the controlling law, *there is a strong presumption that the provision was negotiated with regard to the 1996 Act and controlling law.*” *Id.* (emphasis added).

That strong presumption applies fully here to the agreement provisions dealing with reciprocal compensation, and, as discussed above, is confirmed by all the other textual evidence that the parties intended to adopt the requirements of the 1996 Act and the FCC’s rules. Even outside of the specific context of the 1996 Act, it is an established principle of contractual interpretation that “the legal framework that existed at the time of a contract’s execution must bear on its construction. Contracts are presumed to be written in contemplation of the existing applicable law.” *Florida East Coast Ry. v. CSX Transp., Inc.*, 42 F.3d 1125, 1129 (7th Cir. 1994); *St. Paul-Mercury Indem. Co. v. Rutland*, 225 F.2d 689, 692 (5th Cir. 1955). These

principles are especially applicable here, where, as the Fourth Circuit stressed, parties have particularly strong incentives to adopt the same requirements as federal law imposes.

In short, although WorldCom and GNAPs contend that their agreements require Verizon MA to pay reciprocal compensation for Internet-bound traffic, they cannot point to any language in either of the agreements that supports that result. Rather, each of the agreements' reciprocal compensation terms were plainly intended to track, and do track, the reciprocal compensation obligations imposed by section 251(b)(5) of the 1996 Act, and the FCC's implementing regulations. Under Massachusetts law, the Department must give effect to the plain meaning of these agreements.

**C. The FCC's *Starpower* Decision Confirms That These Agreements Should Be Understood To Impose Reciprocal Compensation Duties Coextensive with Federal Law**

The FCC's *Starpower* decision supports the conclusion that where, as here, an agreement expressly adopts and tracks federal law as to reciprocal compensation, it should be understood to unambiguously impose obligations coextensive with federal law. Indeed, *Starpower* is particularly important to this proceeding because the pivotal provisions of the agreements at issue here closely parallel those in two of the three agreements at issue in *Starpower*. The FCC's reasoning in *Starpower* thus serves as a compelling model for the Department's disposition of the issue here.

The first two *Starpower* agreements contain language that is quite similar to that at issue here.<sup>16</sup> The first Verizon Virginia-Starpower agreement provided that "Reciprocal Compensation" is 'As described in the Act and refers to the payment arrangements that recover

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<sup>16</sup> For the Department's convenience, Attachment 1 to this brief demonstrates the similarity of these provisions and the close connection between all these agreements and the language of the FCC's then-applicable rules.

costs incurred for the transport and termination of Local Traffic originating on one Party's network and terminating on the other Party's network.'" *Starpower* ¶ 6. The agreement defined "As Described in the Act" to mean 'as described in or required by the Act and as from time to time interpreted in the duly authorized rules and regulations of the FCC or the [Virginia SCC].'" *Id.* Then, in delineating the obligation to pay "Reciprocal Compensation," the agreement specified that the parties "shall compensate each other for transport and termination of Local Traffic," defined as "traffic that is originated by a Customer of one Party on that Party's network and terminates to a Customer of the other Party on that other Party's network, within a given local calling area, . . . as defined in [Verizon Virginia's] effective Customer tariffs." *Id.* ¶¶ 6, 7.<sup>17</sup>

The FCC concluded that these provisions "closely resemble the Commission's preexisting descriptions of the kind of traffic subject to the reciprocal compensation mandate of section 251(b)(5) of the Act." *Id.* ¶ 31. Specifically, according to the FCC, the provisions "tracked the *Local Competition Order NPRM*'s description of telecommunications encompassed by section 251(b)(5) as (at least) traffic that originates on one LEC's network and terminates on a competing LEC's network in the same local service area." *Id.* They likewise mirrored former section 51.701(b) of the FCC's rules, which "characterized 'local telecommunications traffic' as telecommunications traffic between a LEC and another telecommunications carrier that originates and terminates within a local service area as defined by a state commission." *Id.* According to the FCC, "[t]hese striking similarities reveal an intent to track the Commission's interpretation of the scope of section 251(b)(5)," so that "whatever the Commission determines is compensable under section 251(b)(5) will be what is compensable under the agreements." *Id.*

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<sup>17</sup> The second Verizon Virginia -Starpower agreement contained similar provisions. *See Starpower* ¶ 12.

Because the FCC had consistently ruled that Internet-bound traffic is not subject to reciprocal compensation under section 251(b)(5), it concluded that, “by tracking the Commission’s construction of section 251(b)(5),” “the parties unambiguously agreed *not* to treat ISP-bound traffic as ‘Local Traffic’ for reciprocal compensation purposes.” *Id.* ¶ 36.<sup>18</sup>

The FCC further held in *Starpower* that the plain terms of the agreements trump any possible reliance by CLECs on the regulatory or negotiating context at the time the parties entered into the agreements, or on the various factors that the FCC enumerated in its *ISP Declaratory Ruling* for consideration in construing the terms of ambiguous agreements. *See Id.* ¶¶ 33-38. That holding is consistent with Massachusetts law, which makes clear that the “‘contemplation’ of the parties . . . is not material where the agreement is unambiguous.” *Blakeley*, 340 N.E.2d at 514.

Given the tight connection between the language in the *Starpower* agreements and the text of the agreements at issue here, the FCC’s conclusion on these points, which rested on the same plain-meaning canon of interpretation that must be applied under Massachusetts law, provides powerful evidence that both this Department and Verizon MA have long been correct in understanding that the Verizon MA-WorldCom and Verizon MA-GNAPs agreements impose the same reciprocal compensation duties as federal law. Indeed, when the FCC, in the exercise of its statutory authority, interprets an agreement within its area of special competence, its interpretive analysis is entitled to the same deference accorded to its statutory interpretations. *See, e.g.,*

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<sup>18</sup> The FCC also rested its decision on a discrete and independent ground — namely, that the first agreement at issue specified that “traffic shall be designated local or non-local based upon the ‘actual originating and terminating points of the complete *end-to-end* call,’” thereby “incorporat[ing] . . . the Commission’s long-standing method of determining the *jurisdictional* nature of particular traffic.” *Starpower* ¶¶ 26, 27. The second agreement contained similar language. *Id.* ¶ 26. The FCC accordingly concluded that, under the first and second agreements, “a call constitutes compensable ‘Local Traffic’ only if it is not jurisdictionally interstate under the Commission’s end-to-end analysis.” *Id.* ¶ 28. The FCC made clear repeatedly that each of the two grounds of its decision was independent and sufficient in itself to support its ruling. *See id.* ¶¶ 31, 36, 41.

*Western Res., Inc. v. FERC*, 9 F.3d 1568, 1576 (D.C. Cir. 1993); *National Fuel Gas Supply Corp. v. FERC*, 811 F.2d 1563, 1568-72 (D.C. Cir. 1987). As then-Judge Scalia explained, it would be “foolish not to accord great weight to the judgment” of an expert federal agency as to issues of contractual interpretation in the agency’s field of expertise. *Kansas Cities v. FERC*, 723 F.2d 82, 87 (D.C. Cir. 1983).<sup>19</sup>

Even without such deference, however, the FCC’s analysis is extremely instructive as to the appropriate method to interpret contract provisions that are very much like the ones at issue here.<sup>20</sup> As in *Starpower*, the Department should thus conclude that the parties unambiguously agreed that “whatever the Commission determines is compensable under section 251(b)(5) will be what is compensable under the agreements.” *Starpower* ¶ 31.

**D. Because the FCC Has Consistently Ruled That Internet-Bound Traffic Is Not Compensable Under Section 251(b)(5), the Agreements at Issue Must Be Understood To Exclude Such Traffic from Their Reciprocal Compensation Requirements**

The only remaining question is whether the FCC treats Internet-bound traffic as subject to the reciprocal compensation requirement in section 251(b)(5). It is undisputed that the FCC

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<sup>19</sup> It is of no consequence that the agreements here do not contain the same “end-to-end” language on which the FCC relied for its second, independent ground of decision in *Starpower*. Because each of the two grounds for decision in *Starpower* was sufficient in itself to support the Commission’s ruling, the respects in which the agreements here *do* parallel those in *Starpower* are enough to make that decision controlling here.

<sup>20</sup> The agreements here are decidedly unlike the third agreement at issue in *Starpower* (between Verizon South and Starpower) and the agreement at issue in *Cox Virginia Telcom, Inc. v. Verizon South Inc.*, 17 FCC Rcd 8540 (2002). The FCC determined that the plain terms of both of *those* agreements required the payment of reciprocal compensation for Internet-bound traffic. In both cases, however, the basis of the FCC’s decision was that those agreements, unlike the first and second *Starpower* agreements and unlike the agreement at issue here, “do[] *not* track the language used by the Commission to implement section 251(b)(5).” *Starpower* ¶ 47 (emphasis added); accord *Cox Virginia Telcom* ¶ 25. As the FCC explained, the third agreement in *Starpower* obligated the parties to pay reciprocal compensation for “‘local traffic . . . as defined in [Verizon South’s] tariff,’” and the parties there agreed that Internet-bound traffic was “local traffic” for purposes of the tariff. *Starpower* ¶¶ 42, 45. Moreover, again unlike the situation here, “the agreement’s definition of ‘local traffic’ neither speaks in terms of ‘origination’ and ‘termination’ of traffic, nor references local calling areas.” *Id.* ¶ 47. The agreement in *Cox* was similar to the third *Starpower* agreement. See *Cox Virginia Telcom* ¶¶ 22-23, 25, 27.

has found Internet-bound traffic not to be subject to reciprocal compensation. As the FCC stated in *Starpower*, “[a]lthough the Commission’s rationale has evolved over time, the Commission consistently has concluded that ISP-bound traffic does not fall within the scope of traffic compensable under section 251(b)(5).” *Starpower* ¶ 31; *see also id.* ¶ 41 (“the Commission consistently has excluded ISP-bound traffic from the reach of [section 251(b)(5)]”).

Moreover, even before the 1996 Act became law, the FCC had consistently held that the type of traffic at issue is interstate and interexchange, not local. ISPs fall within the broader category of “information service” providers (47 U.S.C. § 153(20)) or (in the FCC’s pre-Act terminology) “enhanced service providers” or “ESPs.” As early as 1983, the FCC ruled that traffic sent to ESPs does not terminate at the premises of the ESP, but continues on to the ultimate end-point of the communication and is therefore interstate, not local, in nature. *MTS/WATS Order*<sup>21</sup> ¶ 78. The FCC repeatedly confirmed that analysis in subsequent years. Soon after the 1996 Act was adopted, the FCC declared that the reciprocal compensation duty in section 251(b)(5) applied only to local calls that “originate[] and terminate[] within a local area” and “do not apply to the transport or termination of interstate or intrastate interexchange traffic.” *Local Competition Order* ¶ 1034. The FCC codified its ruling in regulations providing that local exchange carriers “shall establish reciprocal compensation arrangements for transport and termination of local telecommunications traffic.” 47 C.F.R. § 51.703(a) (1997). The regulations defined “local telecommunications traffic” as traffic that “originates and terminates within a local service area established by the state commission.” *Id.* § 51.701(b)(1).

In 1999, the FCC held that, because calls to the Internet through an ISP are jurisdictionally interstate — that is, they terminate at distant locations on the Internet, not locally

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<sup>21</sup> Memorandum Opinion and Order, *MTS and WATS Market Structure*, 97 F.C.C.2d 682 (1983).

at the ISP's modem — they do not qualify for reciprocal compensation under section 251(b)(5). *See ISP Declaratory Ruling* ¶ 26 n.87. After that ruling was set aside on review, the FCC reaffirmed its prior conclusion that “the provisions of section 251(b)(5) do not extend to ISP-bound traffic,” but it rested on a different rationale: stepping away from its prior local/interstate distinction, the FCC held that “Congress excluded from the ‘telecommunications’ traffic subject to reciprocal compensation the traffic identified in section 251(g), including traffic destined for ISPs.” *ISP Remand Order* ¶ 1. And even after the D.C. Circuit remanded (but did not vacate) that order, the FCC has continued to adhere to the position that Internet-bound traffic is not subject to reciprocal compensation under section 251(b)(5). *E.g.*, Memorandum Opinion and Order, *Joint Application by BellSouth Corp., et al., for Provision of In-Region, InterLATA Services In Georgia and Louisiana*, 17 FCC Rcd 9018, ¶ 272 (2002); Memorandum Opinion and Order, *Petitions of WorldCom, Inc., Cox Virginia Telcom, Inc., and AT&T Communications of Virginia, Inc.*, CC Docket No. 00-218, *et al.*, DA 02-1731, ¶ 245 (FCC rel. July 17, 2002) (D.C. Circuit's remand decision “did not ... reverse the Commission's conclusion that ISP-bound traffic is not subject to section 251(b)(5)”).

Because the parties agreed to pay reciprocal compensation only for traffic that the FCC determines to be compensable under section 251(b)(5), and because the FCC has ruled consistently that Internet-bound traffic is not compensable under section 251(b)(5), the Department must conclude that the agreements do not require reciprocal compensation for Internet-bound calls.

#### **IV. CONCLUSION**

The Department should find that, in accordance with state contract law, under the plain terms of both the Verizon MA-WorldCom Agreement and the Verizon MA-GNAPs Agreement,

the parties must pay reciprocal compensation only to the extent required by federal law, as interpreted from time to time by the FCC. It should further find, as the FCC itself has found, that the FCC has consistently interpreted the 1996 Act to exclude Internet-bound calls from the statute's reciprocal compensation requirements. The Department should therefore conclude that neither agreement requires the payment of reciprocal compensation for the Internet-bound traffic at issue here.

Respectfully submitted,

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## ATTACHMENT 1

### COMPARISON OF FCC REGULATIONS, WORLDCOM AGREEMENT, AND STARPOWER AGREEMENTS

	<b>FCC Regulations</b>	<b>Verizon MA-WorldCom Agreement<sup>1</sup></b>	<b>Verizon Virginia-Starpower Agreements<sup>2</sup></b>
<b>Reciprocal Compensation Provision</b>	“Each LEC shall establish reciprocal compensation arrangements for transport and termination of local telecommunications traffic with any requesting telecommunications carrier.” 47 C.F.R. § 51.703(a) (1997).	“Reciprocal Compensation only applies to the transport and termination of Local Traffic” that “originates on [Verizon MA’s] or [WorldCom’s] network for termination on the other Party’s network . . .” WorldCom § 5.8.1.	“The Parties shall compensate each other for transport and termination of Local Traffic in an equal and symmetrical manner at the rates provided in the Detailed Schedule of Itemized Charges . . .” Starpower § 5.7.
<b>Definition of “Local Traffic”</b>	“[L]ocal telecommunications traffic means . . . telecommunications traffic between a LEC and a telecommunications carrier . . . that originates and terminates within a local service area established by the state commission.” 47 C.F.R. § 51.701(b)(1) (1997).	“‘Local Traffic’ means a call which is originated and terminated within a given LATA, in the Commonwealth of Massachusetts, as defined in DPU Tariff 10, Section 5 . . .” WorldCom § 1.38.	“Local Traffic” means “traffic that is originated by a Customer of one Party on that Party’s network and terminates to a Customer of the other Party on that other Party’s network, within a given local calling area . . . as defined in [Verizon Virginia’s] effective Customer tariffs . . .” Starpower § 1.44.
<b>Definition of “Reciprocal Compensation”</b>	“[A] reciprocal compensation arrangement between two carriers is one in which each of the two carriers receives compensation from the other carrier for the transport and termination on each carrier’s network facilities of local telecommunications traffic that originates on the network facilities of the other carrier.” 47 C.F.R. § 51.701(e) (1997).	“‘Reciprocal Compensation’ is As Described in the Act, and refers to the payment arrangements that recover costs incurred for the transport and termination of Telecommunications originating on one Party’s network and terminating on the other Party’s network.” WorldCom § 1.53.	“Reciprocal Compensation” means “As described in the Act and refers to the payment arrangements that recover costs incurred for the transport and termination of Local Traffic originating on one Party’s network and terminating on the other Party’s network.” Starpower § 1.61.
<b>Definition of “As Described in the Act”</b>		“‘As Described in the Act’ means as described in or required by the Act and as from time to time interpreted in the duly authorized rules and regulations of the FCC or the Department.” WorldCom § 1.6.	“As Described in the Act” means “as described in or required by the Act and as from time to time interpreted in the duly authorized rules and regulations of the FCC or the [Virginia SCC].” Starpower § 1.7.

<sup>1</sup> The language of the Verizon MA-GNAPs Agreement is substantively identical to that of the Verizon MA-WorldCom Agreement.

<sup>2</sup> See *Starpower* ¶¶ 6-7. The language is taken from the first Verizon Virginia-Starpower agreement. The second Verizon Virginia-Starpower agreement, which the FCC also found unambiguously excluded Internet-bound traffic from its reciprocal compensation requirement, contains similar provisions. See *id.* ¶¶ 12-13.